IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1532 of 2001(S/S).
(Old No. 18565/1994)

Dewan Singh Rautela son of late Shyam Singh Rautela, resident of village Dagaura, P.O. Ratiyal, district Almora.

……. Petitioner.

Versus

1. The Managing Director, U.P. State Road Transport Corporation, Tehri Kothi, Parivahan Bhawan, Lucknow.
2. The Zonal General Manager, U.P. State Road Transport Corporation, North Zone, Bareilly.
3. The Regional Manager, U.P. State Road Transport Corporation, Kumaon Region, Nainital.

…… Respondents.

Sri B.D. Upadhayaya, learned counsel for the petitioner.

29.08.2006.

HON'BLE RAJESH TANDON, J.

By the present writ petition the petitioners have prayed for a writ of certiorari quashing the orders dated 2.4.1993 passed by the respondents No. 3 and directing the respondents to treat the petitioner in service till the age of superannuation on the basis of his date of birth as 13.10.1939.

Since the petitioner has already been retired from service in the year 1993 no interference is required at this stage. The petitioner wanted to clarify the date of birth by producing the certificate of class VIII as 13.10.1939 and no relevancy can be placed on the said certificate. The petitioner entered in the service of the Government Roadways on 18.2.1956 and the dispute can not be raised at the fag end of the service. In **G.M. Bharat Cooking Coal Ltd, West Bengal Vs Shib Kumar Dushad and others reported in AIR 2001 Supreme Court 72,** the Apex Court has observed as under:

"Before entering into the question of validity and sustainability of the judgment passed by the single Judge and the Division Bench of the High Court in this case we would like to make the observation that in a case where the controversy over the date of birth of an employee has been raised long after joining the service and the matter has engaged the attention of the authority concerned and has been determined by following the procedure prescribed under Service Rules or General Instructions issued by the employer and it is not the case of the employee that there has been any arithmetical mistake or typographical

error patent on the face of the record, the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution should not interfere with the decision of the employer.

The date of birth of an employee is not only important for the employee but for the employer also. On the length of service put in by the employee depends the quantum of retrial benefits he would be entitled to. Therefore, while determining the dispute in such matters Courts should bear in mind that a change of the date of birth long after joining service, particularly when the employee is due to retire shortly which will upset the date recorded in the service records maintained in due course of administration should not generally be accepted. In such a case the burden is heavy on the employee who comes to the Court with the case that the date of birth in the service record maintained by the employer is untrue and incorrect. The burden can be discharged only by producing acceptable evidence of a clinching nature. We are constrained to make this observation as we find that in a large number of cases employees who are on the verge of retirement raise a dispute regarding correctness of the date of birth entered in the service record and the Courts are inclined to pass an interim order for continuance of such employee beyond the date of superannuation on the basis of the entry of date of birth in the service record. Such a situation cannot be commended for the reason that the Court in passing such an interim order grants a relief to the employee even before determining the issue regarding correctness of the date of birth entered in the service record. Such interim orders create various complications. Anticipated vacancy for which the employee next in the line has been waiting does not materialize, on record of which the junior is denied promotion which he has all along been led to believe will be his due on the retirement of the senior."

Subject to aforesaid observations, the writ petition lacks merit and is dismissed. However, liberty is given to the petitioner to approach the appropriate authority for his grievances. He has preferred a representation. The same may be disposed of accordingly in accordance with law.

(Rajesh Tandon, J)

29.08.2006.

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